

# ARKANSAS COURT OF APPEALS

DIVISION III  
No. CACR08-762

LEE MARK HARRIS

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

**Opinion Delivered** February 11, 2010

APPEAL FROM THE DESHA  
COUNTY CIRCUIT COURT  
[NO. CR2006-126]

HONORABLE SAMUEL B. POPE,  
JUDGE

AFFIRMED

---

## JOSEPHINE LINKER HART, Judge

Lee Mark Harris was found guilty in a Desha County jury trial of possession of cocaine with intent to deliver. He received a sentence of eighty years in the Arkansas Department of Correction. On appeal, he challenges the sufficiency of the evidence regarding his constructive possession of the narcotics. We affirm.

The pertinent evidence regarding Harris's constructive possession of the narcotics is as follows. At trial, McGehee Police Officer Jason Williams testified that at approximately two o'clock in the morning on November 8, 2006, he observed a Chevrolet Caprice "going slow" on Highway 65. He ran the tags and discovered that they belonged on a Ford F150. Williams stopped the vehicle. It was driven by Harris, and Danielle Mitchner<sup>1</sup> was in the

---

<sup>1</sup>Mitchner was tried along with Harris. She was also convicted, and her conviction was affirmed by the court of appeals in an unpublished opinion handed down on November 19, 2008. We note that Mitchner also argued that there was insufficient evidence that she constructively

passenger seat.

When Williams made contact with Harris, Harris appeared to be “impaired.” Harris was slumped in his seat and had “drool on the side of his chin, on the left side of his face all the way to the bottom of his chin, that was dried, a white looking substance.” Harris’s speech was “slow” and he had red watery eyes. Williams asserted that Harris responded slowly to Williams’s request to produce his drivers’s license and registration. He ordered Harris to remove the fictitious tag. According to Williams, Harris was unsteady on his feet, and placed his hand on the car “for balance.” Harris used a penny to unscrew the plate, and he placed it in the trunk. Harris denied having open containers in the vehicle or having had anything to drink. When asked who his passenger was, Harris told Williams he did not know who she was; he said she was “a friend.” He gave Williams consent to search the car.

When Williams went back to the car for the search, he noted that Mitchner appeared to be asleep. Williams introduced himself to Mitchner, informed her of the purpose of the stop, and ordered her out of the car. After he searched the driver’s side, he noticed an open purse on the “hump.” In it, he saw “a brown paper sack with little white dryer sheets and a corner of a plastic bag.” When he lifted up the dryer sheets, he observed what he believed was cocaine. Mitchner confirmed that it was her purse, but, according to Williams, “she seemed shocked at the fact that there was anything found in the bag.” Mitchner also stated

---

possessed the cocaine. However, the court of appeals held that because the drugs were found in Mitchner’s purse and the purse was in plain view on the car’s console, right between Mitchner’s seat and the driver’s seat, there was sufficient evidence linking Mitchner to the drugs.

that “she didn’t put nothing in her purse.”

On appeal, Harris argues that the trial court erred by denying his directed-verdict motion because the State’s evidence was not sufficient to prove that he possessed the contraband that was found in his female passenger’s purse. We disagree.

When we review a challenge to the sufficiency of the evidence, we will affirm the conviction if there is substantial evidence to support it, when viewed in the light most favorable to the State. *Dodson v. State*, 341 Ark. 41, 14 S.W.3d 489 (2000). Substantial evidence is that which is of sufficient force and character that it will, with reasonable certainty, compel a conclusion one way or the other, without resort to speculation or conjecture. *Id.* Viewing the evidence in a light most favorable to the State means that we consider only the evidence that supports the verdict. *Morgan v. State*, 2009 Ark. 257, 308 S.W.3d 147 (2009).

It is not necessary for the State to prove literal physical possession of drugs in order to prove possession. *Dodson, supra*. Possession of drugs can be proved by constructive possession. *Id.* Although constructive possession can be implied when the drugs are in the joint control of the accused and another, joint occupancy of a vehicle, standing alone, is not sufficient to establish possession or joint possession. *Id.* There must be some other factor linking the accused to the drugs such as (1) whether the contraband is in plain view; (2) whether the contraband is found with the accused’s personal effects; (3) whether it is found on the same side of the car seat as the accused was sitting or in near proximity to it; (4) whether the accused is the owner of the automobile, or exercises dominion or control over

it; and (5) whether the accused acted suspicious before or during the arrest. *Id.*

Harris asserts that the evidence was insufficient because (1) the evidence was not in plain view; (2) the contraband was not found in his personal effects; (3) the contraband was found in an area close to where he was sitting, but he had left the vehicle at the time of the search; (4) although he was the owner of the vehicle, the contraband was found inside Mitchner's purse; and (5) he did not act suspiciously before or during the arrest. We find these points to be unavailing.

As noted previously, we need only find substantial evidence of some linking factors to affirm the jury's determination that Harris constructively possessed the cocaine. We are mindful that, as with any review of the sufficiency of the evidence, we do not consider the evidence that does not support the conviction. Accordingly, evidence that would tend to support a different conclusion, which in this case would be that the drugs belonged to Mitchner and that Harris was unaware of their existence, is not to be considered. This means that the proof that the drugs were in Mitchner's purse and therefore among her personal effects, is not weighed by us against other factors that tend to connect Harris to the narcotics. We note that the drugs were on the "hump" between the driver's and passenger's seats, which made the contraband easily accessible to Harris. Harris was driving the car and therefore had control and dominion over it. Harris also exhibited suspicious behavior in his evasive answers concerning the identity of his passenger. Finally, there was testimony from Officer Williams that Mitchner denied putting the cocaine in her purse and that she seemed surprised that it

Cite as 2010 Ark. App. 123

was found there. While the statement was hearsay, under our standard of review, we consider all evidence, even that which is improperly admitted, when we determine whether there is substantial evidence to support a jury verdict. *Hicks v. State*, 327 Ark. 652, 941 S.W.2d 387 (1997). Accordingly, we hold that this evidence constitutes substantial evidence linking Harris to the contraband.

Affirmed.

KINARD and HENRY, JJ., agree.